

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,
THE CHIEF JUSTICE

and
THE HON'BLE MS JUSTICE G.ROHINI

WRIT APPEAL NO : 819 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated
29/01/2004 in WP NO : 22452 OF 1999 on the file of the High Court.)

Between:

The Superintending Engineer I & CAD Irrigation Circle,
Nirmal, Adilabad District

..... APPELLANT(RESPONDENT)

AND

M/s. Tirumala Llabour Contract Coop Society, Ltd.,
Rep.by President Shri K. Venkataswamy,
S/o Narsaiah R/o Karimnagar

.....RESPONDENT(PETITIONER)

For the Appellant:GP FOR IRRIGATION & COMM AREA DEV.

For the Respondent: MR.S.LAKSHMA REDDY, Advocate.

The Court Made the Following :

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ORAL ORDER:

The action of the appellant in forfeiting the Earnest Money Deposit of Rs.1,00,000/-, furnished by the respondent, was challenged by the respondent in the writ petition on two grounds- that the appellant had not issued any notice to the petitioner's society before recording any finding as to the correctness and genuinity of the experience certificate, and that the question of forfeiting Earnest Money Deposit would arise only in the event of a tenderer having been awarded contract and not otherwise. The learned Single Judge on the first question held that the appellant did not issue any show-cause notice to the respondent before recording a finding that the certificate furnished by the respondent was false and fictitious, and on that ground, according to the learned Single Judge, the impugned order was liable to be set aside.

Though the learned Single Judge noticed the other ground also, but did not feel it necessary to advert to the same, or record any finding thereupon, and proceeded to allow the writ petition, setting aside the impugned order and directed refund of Earnest Money Deposit, without even reserving liberty to the appellant to take action after complying with the principles of natural justice, which in our view, ought to have been done.

The learned counsel for the respondent submits that the learned Single Judge ought to have decided the second point also, and for that purpose, even the said question may be decided by this Court in appeal or the matter may be sent to the learned single Judge. This submission we do not accept since the respondent is not in appeal before us. It is always open to the respondent to take up that question in the event of appellant issuing fresh proceedings against the respondent for forfeiting the Earnest Money Deposit. Consequently, we allow the appeal and modify the impugned order passed by the learned single Judge to the extent that the order impugned in the writ petition shall stand set aside on the ground that it is violative of principles of natural justice, with a liberty reserved to the appellant to issue show-cause notice in case they would still like to forfeit the Earnest Money Deposit, and then take a decision in accordance with law. It is made clear that in the event of appellant deciding not to issue fresh show-cause notice within a period of two

months from the date of receipt of a copy of this order, the respondent will be refunded the amount within a period of four weeks thereafter. In the event of appellant issuing show-cause notice to the respondent, it will be open for the respondent to challenge the action of the appellant on all available grounds, including the second ground which was taken up in the writ petition.

The Writ Appeal is accordingly disposed of.

(DEVINDER GUPTA, C.J.)

(G.ROHINI, J)

28th June, 2004.

pan/nmr

To

1. K.Venkataswamy S/o.Narsaiah

President of M/s.Tirumala Labour Contract Coop.Societ,

R/o.Karimnagar.

2. To C.Cs. to the the G.P. for Irrigation & Comm.Area

Development, High Court buildings, Hyderabad.

3. Two CD copies

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